IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4708 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

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GULAMKADAR GULAM HUSEN SHAIKH

Versus

COMMISSIONER OF POLICE AHMEDABAD.

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Appearance:

MR ANIL S DAVE for Petitioner

MS.SIDDHI TALATI ASSISTANT GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/11/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed seeking a writ of certiorari for quashing the detention order dated 25.3.1998 passed by the Commissioner of Police, Ahmedabad

under section 3(2) of Prevention of Antisocial Activities Act,1985 (for short 'PASA') and for a writ of habeas corpus for immediate release of the petitioner from illegal detention.

The impugned order of detention contained in Annexure "A" was passed on 25.3.1998 by the Detaining Authority upon being subjectively satisfied that the petitioner is a bootlegger and dangerous person and his activities were prejudicial to maintenance of public order. The Detaining Authority also considered the alternative remedy of externment and was of the view that because immediate prevention of petitioner's antisocial activities was required, the proceedings for externment were time consuming and thereby ineffective. Hence,the impugned order was passed.

The learned Counsel for the petitioner has challenged the impugned order only on one ground which was subsequently introduced in the writ petition by way of amendment incorporating para 17(a) in the writ petition. The learned Counsel for the petitioner frankly stated that he does not want to press the other point of challenge that the petitioner's activities did not amount to disturbance of public order nor were prejudicial to maintenance of public order. In view of this statement, there remains no option but to observe that the subjective satisfaction of the prescribed authority that the petitioner is a dangerous person and his activities were prejudicial to maintenance of public order require no interference and are justified from the material on record.

However, looking to para 17(a) of the writ petition it seems that though this amendment was granted on 5.9.1998 but no counter affidavit on factual assertions made in this para has been filed by the respondents. The contention has been that a representation was sent by the detenu through his Advocate to the State Government but the State Government did not consider it, rather, it returned it to the petitioner's Advocate. The learned Assistant Government Pleader after going through the record of the case with her made a statement that representation of the petitioner was returned by the State Government with observation that it was not signed by the detenu. From this it is manifest that no further compliance was asked for from the Advocate of the detenu. It is thus a case where the representation of the petitioner was not considered by the State Government, rather, it was returned to the Advocate of the petitioner. It is,

therefore, clear that the petitioner's representation till date has not been considered by the State Government which has rendered the detention and continued detention of the petitioner illegal. The Apex Court in the case of Balchand Chorasia Vs. Union of India, AIR 1978 SC Pg.297, on similar facts quashed the detention order and observed that if the representation of the detenu is sent by the Advocate of the detenu it should have been liberally considered and should not have been dealt with technically. The Apex Court also emphasised that where the liberty of a citizen is proposed to be curtailed the representation of such citizen should have been disposed of on merits and not on technical grounds. Overlooking the technicality the Apex Court found that this action of the concerned Government rendered detention order illegal and as such it was quashed. The observation of the Apex Court in the case of Balchand Chorasia (Supra) is fully applicable to the facts of the case before me. Non consideration of representation by the State Government and returning the same to the Advocate of the petitoner has certainly rendered the detention order illegal and invalid. Therefore, the detention order cannot be sustained and has to be quashed. Consequently the writ petition succeeds and is allowed. The detention order dated 25.3.1998 contained in Annexure "A" is hereby quashed. The petitioner shall be released from custody forthwith unless he is wanted in connection with some other criminal case.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt